Supreme Court, U.S.
FILED
JUN 10 1994
OFFICE OF THE CLERK

No. 93-1806

In The

Supreme Court of the United States

October Term, 1993

MEN-GUER CHRYSLER PLYMOUTH, INC.,

Petitioner,

vs.

CHRYSLER CORPORATION,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Has Petitioner advanced any basis under Supreme Court Rule 10 for this Court to exercise its discretion in granting review on a Writ of Certiorari?

2. Did the Sixth Circuit Court of Appeals commit any error in holding that certain provisions of the Ohio Motor Vehicle Dealers Act affect substantive, vested rights and therefore cannot be applied retroactively?

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STATEMENT OF THE CASE

In 1964, the parties to this case, Chrysler Corporation ("Chrysler") and Men-Guer Chrysler Plymouth, Inc. ("Men-Guer"), entered into certain Chrysler and Plymouth dealer agreements which set forth the terms and conditions of their relationship. These agreements contained no expiration date and were terminable at the will of either party. At that time, there was no Ohio statute governing the parties' relationship.

Effective March 14, 1980, the Ohio legislature enacted the Ohio Motor Vehicle Dealers Act (the "Ohio Dealers Act"), Ohio Revised Code §§ 4517.01 - 4517.99. Under the 1980 version of the Ohio Dealers Act, a manufacturer was required to show good cause before it could (1) terminate a dealer or (2) relocate or establish a same line-make dealer within an existing dealer's relevant market area. Ohio Rev. Code Ann. §§ 4517.54 and 4517.50 (Anderson 1993). In 1980, both sections were silent as to retroactive application.

In late 1985, Chrysler notified Men-Guer that, because of Men-Guer's declining sales and poor performance, Chrysler intended to terminate the relationship. Men-Guer filed suit in state court to challenge the proposed termination. Its suit included a claim that Chrysler's proposed termination was in violation of the good cause criteria of Ohio Revised Code § 4517.54. Chrysler removed the action to federal district court.

On April 16, 1986, the district court, Judge Aldrich, ruled that Section 4517.54, the provision of the Ohio Dealers Act requiring good cause for termination, did not apply retroactively because it was not expressly intended to have such an application. Moreover, the district court correctly noted that this interpretation of the provision served to avoid "serious questions regarding [its] constitutionality under the prohibition of the Ohio legislature from

passing retroactive laws . . . ." *Men-Guer Chrysler Plymouth v. Chrysler Corp.*, Bus. Franchise Guide (CCH) ¶ 8620, at 16,545 (N.D. Ohio Apr. 16, 1986). In so ruling, the district court in part relied on a 1981 state appellate court decision, *Coulter Pontiac, Inc. v. Pontiac Motor Div.*, 446 N.E. 2d 1128 (Ohio Ct. App. 1981). *Coulter* had found, *inter alia*, that Section 4517.54 was substantive in nature.

The parties then entered into a settlement agreement that resolved the remaining claims in the lawsuit. The settlement agreement provided for an extension of the existing dealer agreements so that Men-Guer could continue to operate its dealership until December 31, 1990, at which time Men-Guer would voluntarily terminate. Men-Guer also agreed to waive its right, if any, to protest the establishment or relocation of a same line-make dealer within its relevant market area.

Effective October 22, 1987, the Ohio legislature amended Section 4517.54 to be applicable retroactively:

> This Section governs any action or intent to terminate, discontinue, or not renew a franchise whether the franchise was entered into prior to or after the effective date of this amendment.

Ohio Rev. Code Ann. § 4517.54 (Anderson 1993). Section 4517.50, the relocation or establishment provision, was not so amended.

On December 19, 1990, the parties elected to extend their relationship for another year, subject to the terms and conditions of the dealer agreements and of the settlement agreement. Thereafter, the parties again extended their relationship for a period of two years or until such time as a same line-make dealer relocated

within Men-Guer's relevant market area, whichever occurred first. In February of 1992, Chrysler advised Men-Guer that it intended to relocate another same line-make dealer within Men-Guer's market area and that Men-Guer was expected to voluntarily terminate its franchise pursuant to the parties' agreement.

Men-Guer protested (1) the request that it voluntarily terminate and (2) the intended relocation of another same line-make franchise to the Ohio Motor Vehicle Dealers Board ("MVDB") — a statutorily created agency empowered to determine certain disputes between manufacturers and dealers. Ohio Rev. Code Ann. § 4517.30 (Anderson 1993). The MVDB subsequently notified Chrysler that it could take no action until a hearing was conducted pursuant to Ohio Revised Code § 4517.57.

Shortly thereafter, Chrysler went back to Judge Aldrich to reopen the settled lawsuit to enforce the settlement and also filed an independent action seeking to enforce the parties' contractual agreements. Judge Aldrich, believing that the 1987 amendments to the Ohio Dealers Act had effected a reversal of her decision in 1986, refused to enforce the terms of the settlement agreement and dismissed Chrysler's action for lack of jurisdiction, ruling (1) that Sections 4517.50 and 4517.54 applied to the parties' relationship and (2) that the MVDB was the proper forum in which to resolve the dispute. *Men-Guer Chrysler Plymouth v. Chrysler Corp.*, Nos. C85-3368Y, 4:92CV0478, slip. op. at 12-13 (N.D. Ohio Aug. 11, 1992) (App. C to petition).

Chrysler appealed the district court's ruling, and on January 12, 1994, the United States Court of Appeals for the Sixth Circuit reversed the district court's dismissal of the action. *Men-Guer Chrysler Plymouth, Inc. v. Chrysler Corp.*, Nos. 92-3923, 92-3924, slip op. at 9 (6th Cir. Jan. 12, 1994) (App. B to petition). In its opinion, the Sixth Circuit ruled that the termination provision of the Ohio Dealers Act, Section 4517.54, affects substantive,

vested rights insofar as it prohibits a manufacturer from terminating a franchise without good cause, and, in light of Ohio's Constitution, could not be applied retroactively. *Id.* at 8. The appeals court held that Section 4517.50 could not be applied retroactively because its language was silent as to retroactive application, *id.* at 8, and that the MVDB was not the appropriate forum. *Id.* at 9.

The Sixth Circuit remanded the case to the district court for proceedings consistent with its January 12, 1994 opinion. Men-Guer's petition for rehearing was denied on February 11, 1994 and the mandate issued on February 22, 1994. Judge Aldrich is proceeding on Chrysler's request to enforce the parties' contractual agreements — an issue that is fully briefed and pending before her. A status conference on this matter is scheduled for July 1, 1994.

SUMMARY OF ARGUMENT

Petitioner has raised only state law claims in its Petition for Writ of Certiorari. Thus, Petitioner is asking this Court to review the decision of the Sixth Circuit simply because it cited to an Ohio state court decision interpreting state law. Review of such a decision would not effectuate the purposes of Supreme Court Rule 10; hence, the petition should be denied.

Further, Petitioner can make no credible argument that the Sixth Circuit erred in determining that certain sections of the Ohio Dealers Act cannot be applied retroactively. Petitioner's sole argument is that an Ohio appeals court case cited by the Sixth Circuit in its decision is no longer good law. However, Petitioner's argument ignores the purpose for which the Sixth Circuit cited this opinion. Additionally, Petitioner fails to point to any state or federal decision that is in direct conflict with either this Ohio state case or the Sixth Circuit's decision. Accordingly, the petition should be denied.

REASONS FOR DENYING THE WRIT

I.

PETITIONER HAS NOT ADVANCED ANY BASIS UNDER SUPREME COURT RULE 10 FOR THIS COURT TO EXERCISE ITS DISCRETION IN GRANTING REVIEW ON A WRIT OF CERTIORARI.

The reasons stated by Petitioner for the grant of a Writ of Certiorari in this case do not comport with the character of reasons listed in Supreme Court Rule 10. The Sixth Circuit's decision was based solely on Sections 4517.50 and 4517.54 of the Ohio Dealers Act and Article II, Section 28 of the Ohio Constitution; no federal claims were addressed. Petitioner's primary argument to this Court is that the state appeals court decision, *Coulter Pontiac, Inc. v. Pontiac Motor Div.*, 446 N.E. 2d 1128 (Ohio Ct. App. 1981), relied upon by the Sixth Circuit in its decision is incorrect. Thus, Petitioner is requesting that this Court review the conclusions of an intermediate Ohio court about Ohio law.

Petitioner wants this Court to review the following: Whether the *Coulter* court was correct in concluding that Section 4517.54 of the Ohio Dealers Act is substantive in nature. However, review of this state law issue would be contrary to this Court's general rule of deference to the determination of state law by state courts. *Commissioner of Internal Revenue v. Estate of Bosch*, 387 U.S. 456, 463 (1967) ("we ordinarily accept the determination of local law by the [state's] Court of Appeals. . . ."). Moreover, because Petitioner's claims are based entirely on state law, review by this Court would not effectuate the principle purpose of Rule 10, which is to allow the Court to resolve conflicts as to the meaning of provisions of federal law. *Braxton v. United States*, 500 U.S. 344, 347 (1991) (a principal purpose for which the United States Supreme Court uses certiorari jurisdiction is "to resolve conflicts

among the Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law.").

Petitioner also asserts that the Sixth Circuit's decision that certain sections of the Ohio Dealers Act cannot be applied retroactively will affect dealers in states which have similar laws. However, Petitioner does not indicate to which states it is referring, nor does Petitioner inform the Court as to whether the franchise laws of such states contain language regarding retroactivity or whether these states have constitutional provisions banning the passage of retroactive laws similar to Article II, Section 28 of the Ohio Constitution. Although Petitioner argues that the detrimental effect of the Sixth Circuit's opinion is far-reaching, it fails to cite a single decision by a federal court or state court of last resort that is directly in conflict with the reasoning of the Sixth Circuit in the instant case.

Because Petitioner presents only questions of state law and offers no showing that a conflict among the federal or state courts exists, the Petition for Writ of Certiorari should be denied.

II.

THE SIXTH CIRCUIT CORRECTLY FOUND THAT CERTAIN SECTIONS OF THE OHIO MOTOR VEHICLE DEALERS ACT CANNOT BE APPLIED RETROACTIVELY.

A. The Sixth Circuit Committed No Error In Determining That Section 4517.54 Of The Ohio Dealers Act Is Substantive In Nature.

Petitioner's primary assertion of error is that the *Coulter* case is no longer good law. Petitioner asserts that *Coulter*'s statement that Section 4517.54 was substantive and, thus, could not be applied retroactively was nullified by the 1987 amendment making Section 4517.54 explicitly retroactive. While it is true that the

Coulter decision was based, in part, on the then-existing absence of express language regarding retroactive application of Section 4517.54, the *Coulter* court went beyond this analysis of the legislative intent of Section 4517.54 to conclude that even if the legislature had intended to make Section 4517.54 retroactive, it "arguably . . . had no power to do so." *Coulter*, 446 N.E. 2d at 1131. Petitioner's argument that *Coulter* is no longer good law because Section 4517.54 has subsequently been amended to be retroactive begs the question of whether the 1987 amendment is constitutional under Article II, Section 28 of the Ohio Constitution which forbids the passage of retroactive laws.

While clearly comprehending that the 1987 amendment to Section 4517.54 was intended to make Section 4517.54 retroactive, the Sixth Circuit was compelled to determine whether Ohio constitutional law permitted such retroactive application. In the absence of a ruling specifically considering the retroactivity of Section 4517.54 by Ohio's highest court, the Sixth Circuit properly looked to the decisions of Ohio's intermediate state courts for guidance. *See Commissioner of Internal Revenue*, 387 U.S. at 465 (if no decision exists by state's highest court, then federal court must apply what it finds to be the state law after giving proper regard to relevant rulings of other courts of the state). In making this determination, the appeals court also had before it a number of Ohio Supreme Court cases that not only addressed the constitutionality of retroactive application of various Ohio statutes but also evidenced the Ohio courts' strong disdain for retroactive laws. *See, e.g., Van Fossen v. Babcock & Wilcox Co.*, 522 N.E. 2d 489, 496 (Ohio 1988) (when faced with a constitutional challenge, courts must determine whether the retroactive application of a statute affects substantive or remedial rights); *State ex rel. Sears, Roebuck & Co. v. Industrial Commission of Ohio*, 556 N.E. 2d 467, 472 (Ohio 1990) (statute governing workers compensation claims was substantive and therefore could not be retroactively applied).

The Sixth Circuit relied on *Van Fossen* for the principle that a statute implicates substantive rights when it " 'impairs or takes away vested rights; affects an accrued substantive right; [or] imposes new or additional burdens, duties, obligations or liabilities as to a past transaction.' " *Men-Guer*, Nos. 92-3923, 92-3924, slip op. at 8. Ultimately, the Sixth Circuit did not rely on *Coulter* for its determination that Section 4517.54 could not be applied retroactively but rather for its conclusion of law that Section 4517.54 implicates substantive rights. *Id.* at 8. Thus, even if Petitioner is correct in arguing that *Coulter* can no longer be cited for the proposition that Section 4517.54 is not retroactive, there is no error because the Sixth Circuit did not rely on *Coulter* for that proposition. Furthermore, the Sixth Circuit also relied on the language of *Van Fossen* and other Ohio cases in determining that Section 4517.54 implicates substantive rights.

The Sixth Circuit is not alone in finding that provisions of the Ohio Dealers Act are substantive. *See Bill Call Ford, Inc. v. Ford Motor Co.*, 803 F. Supp. 1034, 1044 (N.D. Ohio 1993). Likewise, the Sixth Circuit's decision is consistent with other circuit court decisions interpreting similar statutes. *See, e.g., Chrysler Motors Corp. v. Thomas Auto Co.*, 939 F.2d 538 (8th Cir. 1991); *Scuncio Motors, Inc. v. Subaru of New England, Inc.*, 715 F.2d 10 (1st Cir. 1983).

The only case law cited by Petitioner for the proposition that Section 4517.54 is remedial in nature and therefore can be applied retroactively is *Car Business, Inc. v. Fleetwood Motor Homes*, 492 N.E. 2d 488 (Clermont Cty. Com. Pls. 1985), an Ohio county court case also decided prior to the 1987 amendment of Section 4517.54. However, Petitioner misconstrues the import of the term "remedial" as it is used by the *Car Business* court. In the *Car Business* case, the county court sought to determine the meaning of the term "franchise" as used in the Ohio Dealers Act. The *Car Business* court concluded that the term "franchise" was to be

construed liberally because the Ohio Dealers Act was a remedial statute in that it set forth remedies and means of recovery for those found to hold "franchises" under the Ohio Dealers Act. *See Car Business, Inc.*, 492 N.E. 2d at 491. The *Car Business* court did not address the issue of whether Sections 4517.50 or 4517.54 were remedial or substantive for purposes of determining the constitutionality of retroactivity. However, even if Petitioner is correct that the holdings of the *Coulter* and *Car Business* cases are in conflict, this conflict would be between two Ohio lower courts over a matter of Ohio law. Such a conflict would not justify this Court's review. Accordingly, Petitioner's argument that *Coulter* was wrongly decided should be rejected.

B. The Sixth Circuit Committed No Error In Determining That The Parties' Settlement And Other Agreements Were Clearly Contemplated As Extensions Of Their Original 1964 Agreements And Therefore Were Not Subject To The Ohio Dealers Act.

In its decision, the Sixth Circuit found that the parties' settlement and other agreements were extensions of their original 1964 agreements. In so finding, the appeals court rejected Petitioner's argument that Chrysler sought to enforce only those rights it obtained subsequent to the 1980 enactment of the Ohio Dealers Act. Petitioner argues that the appeals court unnecessarily determined that retroactive application of Section 4517.54 to the parties settlement and other agreements would burden a substantive right negotiated for by Chrysler and thereby would violate Section 28, Article II of the Ohio Constitution. Petitioner offers no support for its argument other than the bald assertion that the Sixth Circuit was incorrect in its ruling.

This Court also should be aware of the fact that the federal district court is currently proceeding on the contract issues in this case. Thus, in addition to being unwarranted, this Court's review of the contract interpretation issue would be premature at this time.

Accordingly, Petitioner's argument that the Sixth Circuit incorrectly interpreted the contract issues in this case should be rejected.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Dated: June 13, 1994.

Respectfully submitted,

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